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COMMENT

THE UNIFORM RELOCATION ACT: A VIABLE SOLUTION TO THE PLIGHT OF THE DISPLACED

The federal government has repeatedly forced vast numbers of the urban poor to move from their homes and neighborhoods in order that federally assisted projects can be carried out. Two categories of federal programs have been traditionally responsible for major population displacement: programs designed to eliminate urban blight by destroying so-called deteriorating sections of cities, and projects aimed at the construction of highways through urban centers. In recent years, a third category of federal programs has led to the displacement of many persons: repossession by the federal government of federally financed private homes and subsidized housing projects.¹ As a result, the poor continue to be displaced from overcrowded and substandard housing to other housing made even more crowded and substandard by their forced relocation.²

1. At the end of fiscal year 1975, the Department of Housing and Urban Development (HUD) held title to 67,875 single family units and 38,665 multifamily units acquired through mortgage defaults. Housing Affairs Letter, June 27, 1975, at 6. See note 65 *infra*.

Ninety-six percent of the Washington, D.C. metropolitan area total of households being displaced were classified as being either low or moderate income, *i.e.*, having incomes not exceeding 80 percent of the regional median. Only three percent of those households displaced were classified as middle income, a figure that represents less than one-half of one percent of the entire Washington metropolitan area. Metropolitan Washington Council of Governments, *Relocation: Residential Displacement in the Washington Metropolitan Area* 15, Jan. 1976.

See *Garrett v. Hamtramack*, 335 F. Supp. 16 (S.D. Mich. 1971), in which the court examined how Hamtramack's black, low income population fell from 14.4 percent to 8.5 percent as a result of the city's planned program of "population loss."

2. HUD Undersecretary Richard C. Van Dusen spoke from the experience of his agency when he said:

When the taking of property for public purposes is concentrated in areas occupied by low-income groups, individual hardships are further compounded, and the community itself can be thrown into turmoil. This has been the unwitting effect of a number of highway and slum clearance projects which has [*sic*] dislocated large numbers of poor families at the same time as they have reduced the total supply of housing available to the poor.

. . . All of the displaced poor who are forced to bid against each other

Prior to the passage of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (commonly known as the Uniform Relocation Act, or URA),³ two separate legislative programs existed to handle most relocation problems. The 1969 amendments to the Housing Act⁴ outlined the benefits available to those displaced as a result of demolition in urban renewal, and federal highway legislation⁵ provided benefits to displacees of its projects, but on a different schedule and basis than those prescribed by urban renewal relocation plans. In addition to these major schemes involving displaced persons, other agencies, such as the Federal Aeronautics Administration, the Department of the Interior, and the Department of Justice, occasionally employed their own systems of compensation when acquisition resulted in the displacement of tenants and homeowners.⁶

The patchwork of benefits and the inequality of treatment afforded displacees, most of whom were poor, prompted passage of the URA in 1970. Its passage superseded and rendered void all other relocation assistance programs then in effect for various federal agencies.⁷ The aims of the new Act, as expressed by the legislators and those testifying before them, reveal the types of problems those sponsoring the URA thought they were solving.

I. POLICY CONSIDERATIONS UNDERLYING THE PASSAGE OF THE ACT

The first consideration of those supporting the URA was uniformity of treatment for displacees.⁸ Throughout the debates and hearings on the bill,

for a limited supply of low-cost housing are injured by public takings which greatly reduce the total supply of housing within their reach.

Hearings on S. 1 Before the Senate Comm. on Government Operations, 91st Cong., 1st Sess. 198-99 (1969) [hereinafter cited as Senate Hearings]. See also L. FRIEDMAN, GOVERNMENT AND SLUM HOUSING, 147-72 (1968).

3. 42 U.S.C. §§ 4601-55 (1970).

4. *Id.* § 1455(h).

5. See Highway Relocation Assistance Act, Pub. L. No. 91-605, 84 Stat. 1724.

6. See, e.g., 42 U.S.C. § 2474(b)(14) (1970); 43 U.S.C. §§ 1231-34 (1970).

7. URA § 220, 42 U.S.C. § 4640 (1970).

8. Senator Muskie commented on the day of the Act's passage in the Senate:

The primary objective of S. 1 is to establish a uniform policy among Federal agencies, and State and local recipients of Federal funds in their dealing with property owners and others displaced by Federal or federally aided land acquisitions.

115 CONG. REC. 31533 (1969).

Both the House and Senate Reports also emphasized that a primary purpose of the Act was uniformity. The House Report stated that the URA was "the culmination of lengthy and extensive efforts to develop legislation establishing a uniform policy for fair and equitable treatment" of displacees. H.R. REP. NO. 1656, 91st Cong., 2d Sess. 1

lack of uniformity was repeatedly cited; advocates of the bill decried instances such as those in which families whose homes were acquired by the federal government pursuant to a plan to build a highway received assistance, while those families one block away whose homes were acquired by the government for the construction of a post office building received none.⁹ Such examples were met with criticism on humanitarian and equal protection grounds, and hope was expressed that the new legislation would provide equality of benefits for all those displaced as a result of acquisitions of real property in which federal monies were involved.¹⁰

Although all of the Act's supporters agreed on the need for uniform benefits, their reasons for believing that such benefits were essential followed two separate rationales. The first relied on the fifth amendment's prohibition of government taking without just compensation: the government may take land for the public good, but if it does so, it must reimburse those whose property is taken.¹¹ The other rationale was more paternalistic: rather than a right, relocation assistance was viewed as a benefit. This benefit was not required in any legal sense, but rather was the product of the generosity of a fair and magnanimous government. This view was repeatedly expressed by Senator Charles Percy, who viewed the URA as responsive to those people

(1970) [hereinafter cited as HOUSE REPORT]. The Senate Report similarly lamented that the then existing

lack of uniformity only provides irritation and confusion in the communities affected. It provides an unfortunate image of Federal Government at the State and local level And it undermines confidence in and support for Government programs.

S. REP. NO. 488, 91st Cong., 1st Sess. 7 (1969) [hereinafter cited as SENATE REPORT]. To solve this problem the URA was said to be "designed to provide for uniform and equitable treatment of persons displaced . . . by Federal and federally assisted projects." *Id.* at 1.

For the expression of similar sentiments as to the purpose of the Act, see 116 CONG. REC. 40167 (1970) (remarks of Rep. Edmundson); *id.* at 40170 (remarks of Rep. Cohelan); *id.* at 42139 (remarks of Sen. Cooper); *id.* at 40172 (remarks of Rep. Koch and Rep. Annunzio).

9. *Senate Hearings* 15. For similar illustrations, see HOUSE REPORT 5; SENATE REPORT 6-7; 116 CONG. REC. 40172 (1970) (remarks of Rep. Koch).

10. HOUSE REPORT 1.

11. The House Report nicely sums up this line of thought:

As the thrust of Federal and federally assisted programs have [sic] shifted from rural to urban situations, it became increasingly apparent that the application of traditional concepts of valuation and eminent domain resulted in inequitable treatment for large numbers of people displaced by public action. . . . The result far too often has been that a few citizens have been called upon to bear the burden of meeting public needs.

HOUSE REPORT 2.

who "cannot adjust without help and have no other recourse."¹² It was his view that "the Federal government must be a place of resort."¹³ This is especially true because the federal government has been the instrument of the displacees' dislocation.

II. PROVISIONS OF THE URA: A BRIEF SYNOPSIS

The URA's statement of policy reflects the legislature's desire for uniformity and symbolizes the victory of those espousing the just compensation rationale. Congress declared its purpose to be the establishment of a

uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.¹⁴

For purposes of analysis, the provisions of the Act can be divided into two basic sections: eligibility and benefits, and administration and enforcement.

A. Eligibility and Benefits

Displaced persons eligible for assistance under the URA are defined in section 101(6) as those who are forced to move from real property as a result of acquisition of the property for a federal or federally assisted program or project *or* as the result of a written order to vacate from the acquiring agency.¹⁵ Those who meet either of these eligibility requirements are entitled to actual reasonable moving expenses or a moving expense allowance determined by the administering agency according to schedules which dictate an amount up to \$300, depending on the locality.¹⁶ If the

12. *Senate Hearings* 58. See *Hearings on S. 1 Before the House Comm. on Public Works*, 91st Cong., 1st Sess. 3 (1969) [hereinafter cited as *House Hearings*].

13. *Senate Hearings* 58.

14. URA § 201, 42 U.S.C. § 4621 (1970).

15. *Id.* § 101(6), 42 U.S.C. § 4601(6). The section provides in full:

The term "displaced person" means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

16. The Department of Transportation compiles the moving allowance schedules for both the Federal Highway Administration and the Department of Housing and Urban Development. The most recent schedule is reprinted in 41 Fed. Reg. 3300 (1976).

allowance is chosen by the displacee in lieu of actual moving expenses, the household receives an additional \$200 dislocation allowance.

In addition to the aforementioned moving expenses, homeowners who have occupied acquired property 180 days before the start of negotiations for its acquisition may apply for a sum of money equal to the difference between the compensation price of the property and the purchase price of comparable decent, safe, and sanitary housing.¹⁷ The displaced homeowner may also apply for compensation for increased interest costs of the purchase money mortgage used to buy replacement housing, as well as certain closing costs incurred in the purchase of such housing.¹⁸ The URA authorizes the agencies to pay up to \$15,000 to each displaced household in order to cover these costs.¹⁹

Displaced persons who are tenants are also eligible for replacement housing benefits. Provided they have occupied the acquired property for 90 days or more before the start of negotiations for acquisition, tenants are entitled to \$2,000 to cover the down payment and closing costs for the purchase of comparable decent, safe, and sanitary housing, or up to \$4,000 for those expenses if the tenant is willing to match the amount in excess of the \$2,000 with personal savings.²⁰ Tenants who choose not to buy a home will receive a payment equal to the difference between the rental price of the unit from which the household was displaced and that of a decent, safe, and sanitary replacement unit.²¹ The URA authorizes agencies to pay up to \$4,000 over a four year period.²²

B. Administration and Enforcement

The Act's provisions can be triggered in one of two ways: by a federal program or project, or by state agency programs receiving federal funds. In

17. URA § 203(a)(1)(A), 42 U.S.C. § 4623(a)(1)(A) (1970).

18. *Id.* § 203(a)(1), 42 U.S.C. § 4623(a)(1).

19. *Id.*

20. *Id.* § 204, 42 U.S.C. § 4624.

21. The word "comparable," which appears in section 203 of the Act to describe purchased replacement housing, was omitted from the description of replacement rental housing in section 204. There is no explanation for this in the legislative history. HUD suggests that the omission was an oversight and recommends an amendment to correct it. *FOURTH ANNUAL REPORT FROM THE PRESIDENT TO CONGRESS ON FEDERAL ACTIVITIES GOVERNED BY THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITIONS POLICIES ACT OF 1970 FOR FISCAL YEAR 1974*, 94th Cong., 1st Sess. (HUD) (Comm. Print 1975) [hereinafter cited as *PRESIDENT'S 1974 REPORT*]. The President's Report, the last such report required by section 214 of the Act, 42 U.S.C. § 4634 (1970), is a compilation of reports by 20 executive departments and agencies. The reports of the executive departments and agencies are not readily available elsewhere. Hereinafter they will be cited to the *PRESIDENT'S 1974 REPORT* and the pagination therein.

22. URA § 204, 42 U.S.C. § 4624 (1970).

the latter case, the state agency must assure the federal agency that an adequate supply of replacement housing exists to accommodate all persons displaced by the proposed project.²³ They must also guarantee that a relocation advisory assistance council will be established to provide relocation assistance to displaced persons. If the federal agency head is not satisfied that there exists sufficient replacement housing to accommodate the people to be displaced by the proposed project, he or she may postpone work on the project indefinitely, or arrange for the construction of "housing of last resort."²⁴

III. AGENCY IMPLEMENTATION AND ENFORCEMENT

Despite the fact that the URA takes a substantial step in the direction of providing the low income displacee with meaningful relocation assistance, it has fallen short of its mark, primarily because of federal failure to implement regulations consistent with the spirit and goals of the legislation. At the outset it was recognized by critics and supporters of the Act alike that federal agencies would play a critical role in the interpretation and enforcement of the Act. As one housing authority noted:

The administrative regulations to be developed under this legislation will determine whether its objective, to require uniform and equitable relocation practices, will be accomplished. The regulations are the real determinants of the relocation program.²⁵

This sentiment was shared by the House Committee on Public Works, which prefaced its section by section analysis of the Act with the following caveat:

. . . Congress . . . can only provide the tools. Their effective use depends upon the attitudes and skill of the officials in the executive branch of the government responsible for their administration. The principle of adequate housing . . . will require . . . magnetism, ingenuity, and a desire on the part of its administrators to

23. *Id.* §§ 205, 210, 42 U.S.C. §§ 4625, 4630.

24. *Id.* § 206, 42 U.S.C. § 4626.

The law provides two specific ways in which this "housing of last resort" may be made available. The General Services Administration is authorized by section 218 of the Act, 42 U.S.C. § 4638 (1970), to transfer surplus government property suitable for housing to state agencies for use as replacement housing. Section 215, 42 U.S.C. § 4635 (1970), authorizes agency heads to provide noninterest seed money loans to nonprofit organizations for the construction of replacement housing. Agencies and states may also obtain replacement housing in ways not specified by the Act, such as by lease, purchase, construction, or conversion of government-insured housing acquired by HUD upon default. Expenses incident to providing replacement housing are to become part of the cost of the project for which the displacement has occurred.

25. *House Hearings* 482 (testimony of Kenneth F. Phillips).

translate this authorization into equitable and satisfactory conditions for the people affected.²⁶

A cursory reading of the URA reveals why Congress was so concerned with the ability of the federal agencies to effectively administer the Act. The agencies are given the sole power to determine when a project's activities will trigger the Act's application²⁷ as well as who is eligible for the benefits and to what extent.²⁸ Equally as critical, federal agencies are given the responsibility of making certain that federally assisted projects are complying with the Act²⁹ and that benefits and services provided therein are being uniformly and efficiently administered.³⁰ In a very real sense, then, the federal agencies, through their regulations, determine whether or not the major objective of the Act—the implementation of uniform and equitable relocation practices—will be realized.

In order to assist the federal agencies with the task of formulating regulations and procedures to implement the Act, former President Richard Nixon appointed the Office of Management and Budget (OMB) to chair an interagency task force. Initial guidelines were published by the OMB in 1971³¹ and it was expected that agency regulations would follow soon thereafter. Yet two years after their promulgation, the second annual report from the President to Congress on progress made under the Act³² revealed that most federal agencies had taken only preliminary steps to implement the Act.³³ Indeed, the Department of the Interior and the

26. HOUSE REPORT 3.

27. URA § 101(6), 42 U.S.C. § 4601(6) (1970), discussed p. 555 *supra*.

28. *See id.* §§ 202-06, 42 U.S.C. §§ 4622-26, discussed pp. 556-557 *supra*.

29. *Id.* § 210, 42 U.S.C. § 4630, discussed p. 557 *supra*.

30. *Id.* § 213, 42 U.S.C. § 4633.

31. Interim Guidelines for Issuance of Regulations and Procedures Implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Jan. 27, 1971 (preliminary draft).

32. The second annual report was submitted to the Senate Committee on Government Operations on July 30, 1973, and has never been published. [Hereinafter referred to as the President's 1972 Report]. This report may be viewed at the offices of the Senate Subcommittee on Intergovernmental Operations.

33. In his introduction to the President's 1972 Report, Senator Muskie, the author of the Act, remarked:

One year ago, upon receiving the President's first report on the implementation of the Uniform Act, I wrote:

These reports speak for themselves. They reveal that, a year after the passage of the Uniform Relocation Act, no comprehensive information exists on the number of people displaced by Federal or federally assisted programs. They show that few Federal agencies are yet in a position to evaluate the effectiveness of the Act's provisions. And they reveal, one year after the Act's adoption, that most Federal agencies have taken only preliminary steps to implement the objectives declared in the Act.

Unfortunately, that statement could still be applied to the administration's

Department of Health, Education and Welfare (HEW) did not publish their final regulations until February and April of 1973.³⁴

Although at present all displacing agencies have promulgated implementing regulations, significant differences still exist among the various agency interpretations of the Act. As a result, a person's eligibility, as well as the extent of benefits he or she might receive, can often depend upon which federal agency is doing the displacing. The Federal Highway Administration, for example, provides that one may qualify as a displaced person if he or she moves as a "result of . . . [t]he initiation of negotiations,"³⁵ whereas the Department of Housing and Urban Development (HUD) provides that an individual who moves as a result of negotiations but prior to the date of HUD approval of a budget for project execution activities will not be eligible for relocation benefits.³⁶

The difference in the cut-off points between HUD regulations and those of the Federal Highway Administration is critical. Several years have been

second annual report. Sheer bulk notwithstanding, the second annual report indicates little change in agency attitude toward implementation of the law; fourteen of twenty agencies reporting replied that they lacked the experience to judge the effect of the Act on the public; six replied in terms so vague as to be misleading and useless in any evaluation. Recommendations are almost identical to those made last year; agency progress in achieving objectives of the Act has consisted for the most part of publishing copious guidelines and studying the problem.

President's 1972 Report 1-2.

34. PRESIDENT'S 1974 REPORT 57 (HEW Report); *id.* at 151 (Department of the Interior Report).

35. 49 C.F.R. § 25.11(a) (1975) provides in pertinent part:

[A] person qualifies as a displaced person if . . . he moves from real property, or moves his personal property from real property, and the move is a direct result of—

- (1) The initiation of negotiations—
- (i) For the real property . . .

. . . .

- (2) A written notice from the agency concerned of its intent—
- (i) To acquire the real property by a definite date . . .

. . . .

- (3) A written order from the agency concerned—
- (i) To vacate the real property . . .

36. 24 C.F.R. § 42.55(a) (1975) provides in pertinent part:

A person qualifies as a displaced person for purposes of establishing basic eligibility for a relocation payment if:

- (1) Such person moves from real property within the project area or moves his personal property from such real property (i) on or after the date of the pertinent contract for Federal financial assistance for a project, or (ii) on or after the date of HUD approval of a budget for project execution activities resulting in displacement, provided that the contract for Federal financial assistance for the contemplated project is thereafter executed. . . .

known to elapse between initial proposals for a project and final approval.³⁷ Once it is known that a neighborhood is being condemned for demolition, the general physical, economic, and social tone of the area begins to deteriorate rapidly. Residents are under considerable pressure to move out.³⁸ Indeed, they often have little choice, as in cases in which landlords cease to maintain buildings or when there is an opportunity to obtain affordable replacement housing. HUD regulations have the effect of forcing these individuals to make the impossible choice of remaining in the area until the project is finally approved or leaving and forfeiting the benefits they would otherwise obtain under the URA.

HUD's regulations and those of the Department of Transportation also differ significantly with respect to the quality of replacement housing offered displaced tenants. Federal Highway Administration regulations provide that replacement housing must not only be decent, safe, and sanitary, but also at least as good as the buildings being vacated.³⁹ HUD, on the other hand, requires only that replacement housing be decent, safe, and sanitary,⁴⁰ thereby leaving open the very real possibility that newly acquired housing will be far inferior to that which was vacated.

Discrepancies in agency regulations such as these not only undermine a major goal of the Act—uniformity—but they seriously obstruct state and metropolitan relocation efforts. Indeed, the Metropolitan Washington Coun-

37. A case in point is *Lathan v. Volpe*, 455 F.2d 1111 (9th Cir. 1971), in which seven years elapsed between choice of a corridor for Interstate 90 and federal approval for right of way acquisition.

38. See *id.* at 1114. The *Lathan* court noted that the choice of a corridor . . . is bound to have a deleterious effect on the area within the corridor. As a practical matter, there is no longer an open market for the property in the corridor; there is only one potential buyer, the state. The inevitable effect is a lessening of the property owner's motivation to maintain his property and a depressing effect upon property values The type of community spirit that seeks to preserve, protect, and improve a neighborhood is bound to disappear under these conditions.

Id.

39. 49 C.F.R. § 25.43 (1975) provides in pertinent part:

(a) No DOT official may approve a Federal project to which this part applies which will result in the displacement of any person until he determines that—

(1) Fair and reasonable relocation payments will be provided to displaced persons as required by Subparts E, F, and G of this part;

. . . .

(4) *Comparable replacement dwellings will be available, or provided if necessary, within a reasonable period of time before any individual or family is displaced.*

(emphasis added).

40. See 24 C.F.R. § 42.120(a) (1970).

cil of Governments, in its annual report on residential displacement and relocation housing needs in the Washington area, cited lack of uniformity among agency regulations as a major factor hindering a coordinated relocation planning process.⁴¹

Another example of lack of agency zeal in attaining the goals of the Act is indicated by the treatment of section 210.⁴² Considered to be a cornerstone provision, section 210 provides that the head of a federal agency shall not approve any grant to a state agency unless he or she receives "satisfactory assurances" from the state agency that there will be available within a reasonable time prior to displacement sufficient and affordable, decent, safe, and sanitary housing for displacees in areas not generally less desirable than their former areas in regard to public utilities, commercial facilities, and places of employment.⁴³ Although the various agencies have promulgated extensive regulations implementing this section,⁴⁴ sparse attention is accorded the manner in which state agencies comply with them. As a result, state agencies have managed to bring their projects into apparent conformity with the URA by using questionable statistical methods to artificially increase the stock of available relocation housing.⁴⁵

One example of the state agencies' reliance on such questionable methods involves the use of "turnover" as an indicator of available relocation dwellings.⁴⁶ The agency arrives at a number of housing units that would become available in a given area during any one year by counting the number of occupied units that exist in the area and then multiplying that figure by the percentage of units in the area that change hands during the average year. This figure is then compared to the number of persons displaced.⁴⁷ Not only does this method ignore the fact that other persons besides those displaced by federal projects may be seeking housing in affected areas, but it also ignores the fact that the project in question will

41. See Metropolitan Washington Council of Governments, *Relocation: Residential Displacement in the Washington Metropolitan Area* 18, Mar. 1974.

42. 42 U.S.C. § 4630 (1970).

43. *Id.*

44. Illustrative of agency regulations construing section 210 are Department of Transportation regulations, 49 C.F.R. §§ 25.51-.61 (1975), and HUD regulations, 24 C.F.R. § 42.30 (1975).

45. HUD-financed projects seem to be the worst offenders. Indeed, the President's 1974 Report to Congress reports five cases pending against HUD-financed state projects in which the adequacy of relocation housing provided by state authorities was being challenged. PRESIDENT'S 1974 REPORT 67-68 (HUD Report). One of these cases has been settled in favor of the plaintiffs. See *Dasher v. Housing Authority*, 64 F.R.D. 720 (N.D. Ga. 1974) (plaintiffs entitled to attorneys' fees).

46. See *Keith v. Volpe*, 352 F. Supp. 1324 (C.D. Cal. 1972).

47. *Id.* at 1347.

necessitate the demolition of housing and as a result reduce the housing supply. The use of turnover has been banned by HUD⁴⁸ and was recently declared by a federal court in California, in *Keith v. Volpe*,⁴⁹ to be an invalid means of assessing the availability of the relocation housing supply. Nevertheless, nothing in the Federal Highway Administration regulations prohibits state highway agencies from continuing to use this method.

Another means used by local authorities to "expand" the housing supply is that of giving displacees priority for public housing and thereby forcing the thousands who have been on the waiting lists for years to wait a few years longer.⁵⁰ Finally, state agencies have been known to understate the demand for relocation housing by deliberately ignoring concurrent displacements from other highway or public projects.⁵¹ Certainly this was the case in *Keith v. Volpe*, in which the California Division of Highways calculated the number of homes which would become available to the 21,000 people displaced by Century Freeway by using the average annual turnover rate, a method which does not take into account displacement caused by competing local and federal projects.

IV. INTERPRETATION OF THE ACT

Though lack of uniformity among agency regulations and half-hearted enforcement of section 210 have diluted the effectiveness of the URA, inefficient administration only partially explains the problems which have surfaced since the Act's passage. There are substantive deficiencies, due in part to the narrowing construction placed upon the Act by the courts and the administrative agencies, and in part to the lack of foresight and miscalculation by Congress.

Eligibility for the Act's benefits is determined by section 101(6),⁵² which defines a "displaced person" as one who "moves from real property . . . as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate . . . for a program or project undertaken by a Federal agency, or with Federal financial assistance"⁵³ Although section 101(6) enabled 124,000

48. See Mandelker, *A Model State Relocation Law*, 1971 URBAN L. ANN. 117, 118.

49. 352 F. Supp. 1324, 1350 (C.D. Cal. 1972).

50. Mandelker, *supra* note 48, at 118. This is precisely what was done with the displacees from the Sky Tower project. See pp. 566-67 *infra*. Approximately 30 families were relocated to the HUD-subsidized project of Congress Park, despite the fact that there were already 126 families on the waiting list at that time. Telephone conversation with the resident manager of Congress Park, Feb. 17, 1976.

51. Mandelker, *supra* note 48, at 118.

52. 42 U.S.C. § 4601(6) (1970).

53. *Id.*

persons to claim benefits in fiscal year 1974,⁵⁴ a substantial number of individuals displaced as a result of federal action were excluded and will continue to be excluded from its coverage because of the manner in which this provision has been interpreted.

For example, in *Feliciano v. Romney*,⁵⁵ section 101(6) was construed as not covering individuals displaced during the so-called "planning stages" of federally assisted urban renewal projects. The planning stage is that period beginning with initial approval of a state's application for urban renewal assistance and ending on the date upon which the federal grant or loan contract is executed. During this time, if a "letter of consent" is obtained from HUD, specified activities such as land acquisition, site clearance, and tenant relocation can actually be initiated by state authorities despite the fact that the project has not yet been finally approved by federal authorities.⁵⁶ Pursuant to such a "letter of consent," New York City officials forced 7,000 families to relocate in order to make way for site clearance for the Milbank-Frawley Circle Renewal Project.⁵⁷ The majority of these families received no relocation benefits; those who received aid were relocated in substandard units. Arguing that the Uniform Relocation Act entitled them to relocation benefits, the displacees in *Feliciano* brought suit against HUD in the District Court for the Southern District of New York. The court held that prior to the execution of a contract for the loan or grant, an urban renewal project is not a project undertaken by the federal government.⁵⁸ Since the Act explicitly applies only when displacement has resulted from the acquisition of land by a federal or federally assisted project or program, the 7,000 families in question were not protected by the Act and therefore were not entitled to relocation benefits.⁵⁹

Individuals displaced by projects under which federal aid is afforded a private person or enterprise rather than a state agency have been denied assistance under the Act as well. In the District of Columbia, 50 families were forced to vacate their homes to make way for rehabilitation work being performed by a private developer pursuant to a federally sponsored program known as Project Rehab.⁶⁰ HUD refused to give these families relocation

54. See Letter from Arthur F. Sampson, Administrator, General Services Administration, to President Gerald R. Ford, Dec. 20, 1974, reprinted in PRESIDENT'S 1974 REPORT VII.

55. 363 F. Supp. 656 (S.D.N.Y. 1973).

56. *Id.* at 662.

57. *Id.* at 660.

58. *Id.* at 672.

59. *Id.*

60. Project Rehab was conceived by HUD in 1969 in an effort to renovate thousands of deteriorating units across the country for low and moderate income families. Private

assistance under the Act despite the fact that all of the project's property acquisition and construction costs were federally financed. When sued by the displacees, HUD's contention was that since section 210 of the Act, which outlines the relocation obligations of a federally assisted program, refers only to federally assisted projects administered by state agencies, a private developer has no obligation under the Act.⁶¹

This narrow construction of the Act was sharply criticized by members of the House and the Senate. Representative John A. Blatnik, Chairman of the House Public Works Committee and one of the original sponsors of the Act, called then-Secretary of HUD George Romney's position "callous and incomprehensible."⁶² The law, Blatnik said, was intended to insure humane treatment of low income families who are most often and most grievously affected by well-intentioned public programs such as Project Rehab.⁶³ To date, HUD's regulations with respect to such private development remain unchanged and the Act continues to be construed as precluding relief to those displaced by federally assisted projects undertaken by nonprofit groups, private educational institutions and hospitals, profitmaking real estate developers, and others.⁶⁴

developers were to do the renovating with federal mortgage subsidies. Washington Post, June 9, 1972, at A24, col. 7.

61. *Manning v. Romney*, Civil No. 72-1342 (D.C. Cir., April 13, 1972). Judges Tamm and MacKinnon enjoined the private developers from evicting any of the tenants until a trial could be held on the merits. This trial never materialized, however, because HUD chose to sidestep the legal issue by awarding the displacees \$2 million in Model Cities Funds instead of relocation benefits prescribed by the Uniform Relocation Act. Since this money was used to relocate the tenants, the issue was mooted, and HUD was able to avoid the risk of an appeals court decision in favor of the displacees.

62. Letter from Representative John A. Blatnik, Chairman, Committee on Public Works, to George W. Romney, Secretary, HUD, June 7, 1972.

63. "In drafting the legislation all of us were concerned that its purpose would not be thwarted by narrow, tortured, legalistic, administrative interpretations." *Id.* Senator Howard Baker also strongly disagreed with HUD's position in *Manning*. He stated that as far as he was concerned, it was "abundantly and unarguably clear from the long legislative history . . . that the purpose of the Act was to extend [URA's benefits] . . . [w]herever a federal dollar reaches . . ." 118 CONG. REC. 12343 (1972).

Along with Senators William Brock and Edmund Muskie, Senator Baker led an effort to amend the URA to explicitly provide that the Act cover all federally assisted projects undertaken directly by the private sector. The bill, S. 1819, 92d Cong., 2d Sess. (1972), was passed by the Senate, but died in the House committee.

64. 24 C.F.R. § 42.20(h)(15) (1975). *See also* *Parlane Sportswear v. Weinberger*, 381 F. Supp. 410 (D. Mass. 1974), *aff'd*, 513 F.2d 835 (1st Cir.), *cert. denied*, 423 U.S. 925 (1975), in which the tenant plaintiff was evicted when Tufts University needed the leased premises for a federally funded cancer research project. The court held that the plaintiff was not entitled to relocation assistance, stating that:

Nowhere in [the URA] is there any operational provision calling for pay-

These examples of rigid construction placed upon section 101(6) do not stand alone. Relocation benefits have also been denied persons displaced by HUD's acquisition of defaulted property insured by HUD under its various housing programs.⁶⁵ Displacement has come in two ways: either through HUD-ordered eviction prior to actual transfer of title to HUD, or through sale or demolition of the property subsequent to acquisition. In either case, the occupant is displaced as a result of HUD's action. Nonetheless, HUD argues that these displacees are not entitled to relocation assistance under the URA because neither the acquisition nor the order to quit is for a "federal program or project," as required by section 101(6).⁶⁶

Two federal courts have upheld HUD's position. In *Caramico v. Romney*,⁶⁷ Judge Dooling of the Eastern District of New York ruled that former tenants of two- to four-family housing which had been federally financed pursuant to the Housing Act and was currently in default were ineligible for relocation assistance under the Act regardless of the fact that they had been forced from their homes because of an order from HUD demanding vacant delivery of the defaulted property. In affirming Judge Dooling's

ments to a person, such as the plaintiff, who is displaced by a private entity that has a grant of Federal financial assistance for its project.

Id. at 412. The decision did not address the issue of what made the project private and not federal, or whether Tufts would, without the federal grant and encouragement, have undertaken the project.

In dicta, the *Parlane* court retreated somewhat from its harsh position by strongly implying that, although Congress did not intend the Act to be so interpreted, in the absence of language clearly manifesting such congressional intent, the court's hands were tied. The court stated: "This case points up the need for corrective legislation if the generous intention expressed by Congress in the Act is to be given full implementation." *Id.* at 413.

65. Pursuant to sections 202, 203, 220, 221, 235, and 236 of the National Housing Act, 12 U.S.C. §§ 1701, 1706-13 (1970), HUD loans or insures mortgages for single family, one- to four-family, and multifamily housing. When the mortgagor, who is sometimes the homeowner, but most often the landlord, defaults on the mortgage, HUD may foreclose and acquire title to the property. HUD often orders tenants and homeowners of one- to four-family housing to vacate their homes as a condition of transfer of title to HUD. 24 C.F.R. § 203.381 (1975). According to HUD's *Property Disposition Handbook*, "it is HUD's primary objective to dispose of all acquired multifamily properties at the earliest possible date at the highest price obtainable in the current market." HUD, *Property Disposition Handbook: Reconditioning Acquired Properties* ch. 2, at 3, June 1972 (HM 4325.1). Because this objective is inconsistent with maintaining the housing projects for low income tenants, those tenants are generally ordered to vacate upon sale of the property to the highest bidder, who usually wishes to either demolish the buildings or renovate them so that higher rents may be charged.

66. It is ironic that HUD, when it acquires housing it helped build because of the shortage of decent housing for low income people, not only deprives these people of the housing, but denies them assistance in finding replacement housing as well.

67. 390 F. Supp. 210 (E.D.N.Y. 1973), *aff'd sub nom. Caramico v. HUD*, 509 F.2d 695 (2d Cir. 1974).

opinion, the Second Circuit agreed with HUD that the dislocation of these families was not caused by a federal program or project, and held that mortgage insurance acquisition, unlike urban renewal acquisition, "must be characterized as random and involuntary while normal urban renewal contemplates a conscious government decision to dislocate some so that the entire area may benefit."⁶⁸

In *Jones v. HUD*,⁶⁹ the District Court for the Eastern District of Louisiana held that low income tenants of a defaulted multifamily HUD-subsidized housing project were also ineligible for relocation assistance despite the fact that they were given notice to vacate, with HUD's approval, so that the buildings could be demolished and the land sold to the highest bidder. The court found that only those displaced because of government projects could be eligible for assistance under the Act. Under the court's interpretation, HUD's proposed sale of the land to a private developer was simply not the kind of project contemplated by the drafters of the Act.

The restrictive interpretations of section 101(6) by the courts in *Caramico* and *Jones*, however, have been refuted by Judge Gerhard Gesell of the District Court for the District of Columbia. In *Cole v. Hills*,⁷⁰ Judge Gesell rejected HUD's argument that the agency might serve notices to quit on tenants of property it had acquired without granting them the benefit of assistance under the Act. In *Cole*, tenants of Washington's Sky Tower, a HUD-subsidized defaulted low income housing project which HUD acquired pursuant to its guarantee agreement, were issued a notice to quit for the express purpose of demolishing the building for subsequent resale of the land. Judge Gesell, in granting the tenants' motion for partial summary judgment, refrained from deciding whether the federal acquisition of property through default of mortgages on housing insured under the Housing Act was an acquisition for a federal program or project. Instead, the court decided the narrow issue of whether the order to quit sent by HUD was an order by the acquiring agency for a federal project. It was found to be undisputed that HUD was an acquiring agency which had sent a notice to quit to tenants of HUD-acquired property for the purpose of vacating the building so that federal funds could be spent on the federally approved "project" of demolishing the buildings. For this reason, the tenants who moved out as required by the notice to quit were eligible for relocation assistance. This case is currently being appealed by HUD on the basis that

68. *Caramico v. HUD*, 509 F.2d 695, 698 (2d Cir. 1974).

69. Civil No. 74-2628 (E.D. La. Nov. 12, 1974), discussed in *Jones v. HUD*, 390 F. Supp. 579, 583 (E.D. La. 1974).

70. 396 F. Supp. 1235 (D.D.C. 1975).

the demolition was not a federal project, and cross-appealed by the tenants on the grounds that the acquisition as well as the order to vacate was for a federal project, and that all tenants who moved out because of that acquisition, regardless of whether they received an order to quit, are eligible for URA assistance.⁷¹

Even if displacement results from implementation of an admitted federal or federally assisted project, the displacee still may be barred from the benefits of the Act. An individual who moves into a project area "less than ninety days prior to the initiation of negotiations" for the acquisition of his or her new living quarters will be ineligible for replacement housing.⁷² The effect of this 90-day condition is harsh when one considers that the Act contains no notice provision requiring that the general public be informed of the date when acquisition negotiations for a given area will begin. The agencies which do provide for public hearings require only that notice of acquisition be posted 15 days after approval of that phase of the project which will cause displacement.⁷³ It is difficult to imagine how most prospective tenants can be expected to obtain this sort of information.

V. SUBSTANTIVE DEFECTS IN THE ACT

Putting aside questions of initial eligibility and considering actual relocation benefits afforded the displacee by the Act, one is forced to conclude that if the Act's purpose is to guarantee the displacee adequate housing at affordable prices comparable to prior rental costs, it misses the mark by a wide margin. Section 204 is the key provision dealing with relocation housing for tenants.⁷⁴ As previously discussed,⁷⁵ this section entitles displaced tenants to a maximum of \$4,000 over a four year period to aid them in obtaining suitable relocation housing. This payment may also be used as a down payment on the purchase of a replacement home, provided that the displacee match with his or her own savings any agency payment greater than \$2,000.⁷⁶

There are a number of flaws in this provision which render it ineffective to carry out the goals of the Act in today's inflationary economy. For example, the provision contains no mechanism which would tie the stated maximum benefits to the movement of such economic variables as apartment

71. *Appeal docketed*, Civil No. 75-2268, D.C. Cir. March 10, 1975.

72. URA § 204, 42 U.S.C. § 4624 (1970).

73. *See* 49 C.F.R. § 25.91 (1975) (Department of Transportation regulations).

74. 42 U.S.C. § 4624 (1970).

75. *See* p. 556 *supra*.

76. URA § 204(2), 42 U.S.C. § 4624(2) (1970).

vacancy rates, mortgage interest rates, and residential construction costs. As a result, inflated rental costs have detracted considerably from the effectiveness of the \$4,000 ceiling.⁷⁷ In addition, the four year time limit upon payment of rental subsidies to displaced tenants does not recognize that it is unlikely that many low income families will be able to increase their incomes within this time to adjust to increased rental prices of relocation housing. This is particularly true with respect to the elderly, the handicapped, and the unskilled worker.⁷⁸ As a result, at the end of the four year period, a great many families must choose between diverting funds from other vital budgetary items to cover the lost rent increment or moving to less expensive, inferior housing.⁷⁹

For the tenant who wishes to purchase a home, section 204 provides precious little assistance. Under conventional financing, which requires a 20 percent down payment, the \$2,000 entitlement is only sufficient to buy a \$10,000 house.⁸⁰ Normally this is a lower grade of housing than that in which the person currently lives; seldom does it meet the standard of a decent, safe, and sanitary dwelling.⁸¹ While the tenant may receive up to \$4,000, any amount in excess of \$2,000 must be matched with personal savings. It is highly unlikely that the low income displacee will have cash on hand to meet this requirement, and it is equally improbable that he or she will be able to borrow the necessary matching funds.⁸²

These features of section 204 have been criticized by a number of federal agencies.⁸³ The Department of Transportation (DOT) labeled the provision discriminatory against low income persons and recommended that the match-

77. From 1960 to 1975 (third quarter), the vacancy rate for rental dwellings in the United States decreased from 8.1 percent to 6.2 percent. U.S. DEP'T OF COMMERCE, 1975 STATISTICAL ABSTRACT OF THE UNITED STATES, tables 1191, 1194 (1975). The median rent increased from \$71.00 per month in 1960 to \$137.00 per month in 1975 (third quarter). U.S. Dep't of Commerce Supplemental Current Housing Reports: Housing Vacancies, series H-111-75-3, Nov. 1975.

78. In fiscal year 1974, 10,804 of the 41,531 persons displaced by HUD projects (not including displacements caused by HUD's property disposition program) were 62 years old or over; 2,573 of the 9,932 claimants displaced by the Federal Highway Administration were 62 years old or over. PRESIDENT'S 1974 REPORT 91, 281.

79. *Id.*

80. PRESIDENT'S 1974 REPORT 180 (Bureau of Reclamation Report). This is hardly satisfactory, considering that the median sale price for vacant single family dwellings was \$29,000 in the third quarter of 1975. U.S. DEP'T OF COMMERCE, *supra* note 77, Supplemental Current Housing Reports at 3.

81. *Id.*

82. *Id.*

83. See PRESIDENT'S 1974 REPORT 180 (Bureau of Reclamation Report); *id.* at 242-43 (Department of Transportation Report).

ing requirement be dropped.⁸⁴ DOT also suggested that the four year period during which rental equalization payments are received by the displacee be extended.⁸⁵ Certainly DOT's suggestions would make the Act temporarily more effective. A more permanent solution, however, would be to amend section 204 to include a mechanism through which all relocation payments would be automatically increased or decreased to reflect the standard of living in a given area. Moreover, the four year period during which the displacee receives rent supplements should be made renewable upon application so that persons unable to increase their income to meet the increased costs of their new living quarters may continue to receive a subsidy.

Because of the current low vacancy rate, it is literally impossible to provide adequate relocation housing in many areas unless new units are built to replace those demolished.⁸⁶ The legislative history of the URA indicates that the sponsors of the legislation were well aware of the importance of "replacement housing" and, indeed, considered it to be an essential component of the Act's relocation program. As stated in the House Report:

[P]erhaps most important of all, [this legislation] gets to the heart of the dislocation problem by providing the means for *positive action to increase* the available housing supply for displaced low and moderate income families and individuals.⁸⁷

Viewed in this light, the meek provisions of section 206⁸⁸ are surprising. The section provides only that if the head of the federal agency determines that relocation housing is not available, he or she *may* take such action as is necessary to provide "last resort" housing.⁸⁹ This section retreats considerably from the stern stand taken in section 209 of the 1969 amendments to the Housing Act of 1949,⁹⁰ requiring one-for-one replacement of all low and moderate income units demolished because of urban renewal projects in areas with a vacancy rate of less than 5 percent.⁹¹

84. *Id.* at 274 (Department of Transportation Report).

85. *Id.* at 243.

86. The District of Columbia provides a graphic example of the current state of the housing market. The 1975 Statistical Abstract of the United States, *supra* note 77, indicates that the metropolitan-wide vacancy rate for 1975 was 5.8 percent for apartments and 1.2 percent for single family homes. *Id.* at 719, table 1228. A vacancy rate of 6.8 percent is considered by many to be essential for adequate market flexibility. Metropolitan Washington Council of Governments, *supra* note 41, at 59. Moreover, as of January 31, 1976, the number of households on waiting lists for public housing totalled 8,045. Telephone conversation with Ms. Vanessa Graves, clerk, National Capital Housing Authority, Feb. 18, 1976.

87. HOUSE REPORT 3 (emphasis added).

88. 42 U.S.C. § 4626 (1970).

89. *Id.* See note 24 *supra*.

90. 42 U.S.C. § 1455(h) (1970).

91. *Id.*

Contrary to the predictions of the URA's sponsors, section 206 certainly can not be regarded as a command for positive agency action. From July 1, 1971 to January 30, 1972, relocation housing was constructed only once—for a large family in Alaska whose former dwelling was located in the right-of-way of a federal project.⁹² As late as 1974, 10 states had not yet enacted the necessary enabling legislation which would permit them to use the "last resort" provision of the URA.⁹³ Moreover, in its 1974 Fiscal Year Report, HUD described its use of section 206 as "extremely limited," and estimated total expenditure under the provision at only \$1.9 million.⁹⁴ The Federal Highway Administration's report was a bit more optimistic. Reporting a "substantially increased" interest and utilization of last resort housing by the states (the number of states with last resort housing projects underway or approved had increased from four to 12), it indicated that a cumulative total of \$4,056,119 had been spent for last resort housing.⁹⁵

These expenditures hardly approach those needed to prevent the housing supply from decreasing. The present state of the housing market, in combination with the growing number of federal projects causing displacement,⁹⁶ makes it imperative that Congress put some teeth into section 206. Hopefully, it will choose to uniformly extend the one-for-one replacement concept⁹⁷ of the 1969 Housing Act to all relocation projects.

Clearly, the URA is not without its problems; nearly all of the Act's substantive deficiencies can be corrected, however, by amending legislation. With the fourth and final progress report on the Act having been submitted to Congress in March 1975,⁹⁸ it is likely that the Act will be up for review in the near future.

The uniformity and coordination problems caused by differing agency interpretations of the Act may not be as easily remedied. The President's annual reports reveal that the agencies have taken a variety of steps to remedy these problems. For example, in 1971, seven federal regional councils were established to assist in resolving the differences in federal agency regulations and to coordinate state and local relocation activities with those of the federal government. Unfortunately, the councils have made

92. See President's 1972 Report 11 (Department of Transportation Report).

93. PRESIDENT'S 1974 REPORT 267 (Department of Federal Highway Administration Report).

94. *Id.* at 77 (HUD Report).

95. *Id.* at 267 (Department of Federal Highway Administration Report).

96. See PRESIDENT'S 1974 REPORT 89-127.

97. See discussion p. 569 *supra*.

98. See PRESIDENT'S 1974 REPORT.

little headway. In its 1974 report, the regional council of New England stated:

[M]ost differences [among the federal regulations] are not susceptible of resolution at the regional level. Further, since each agency must resolve any issue within the constraints of its own regulations, the role of the Task Force is limited to one of suggestion.⁹⁹

Perhaps the solution to the Act's uniformity and coordination problems lies not with the creation of more bureaucracies but rather with the promulgation of a single set of regulations for all federal agencies and a corresponding and coordinated uniform scheme administered on the state level.¹⁰⁰

VI. JUDICIAL REMEDIES

The discussion thus far has centered on long-range improvements in the federal relocation program by a combination of amendments to the URA and changes in agency regulations. However, lawyers who now represent the poor are taking more immediate steps toward improvement in the federal courts. The following is an examination of arguments used to persuade courts to order federal and state agencies to apply the provisions of the URA in a manner consistent with the Act's goals.

A. Injunctions

It is critical that persons about to be displaced by federal action without the benefit of the URA petition a court to enjoin displacement until the merits of the relocation claim are decided. If the displacing agency is not enjoined at the outset, it will proceed to remove families and demolish buildings. By the time the case is decided on its merits, or an appeal from a lower court's denial of an injunction is heard, the relocation issue is often moot¹⁰¹ and equity is unable to "undo what has, by the working of time and intervening events, escaped the power of injunction."¹⁰²

Courts are recognizing the necessity of immediate injunctions in cases involving a challenge to agency denials of URA assistance. A federal district court in *La Raza Unida v. Volpe*,¹⁰³ for example, granted plaintiff's motion for preliminary injunction using traditional equity standards in determining that failure to grant the injunction would lead to irreparable harm,

99. *Id.* at 351 (Federal Regional Council Report).

100. HEW made this suggestion in its fiscal 1974 report. *Id.* at 58 (HEW Report).

101. See discussion pp. 563-64 *supra*.

102. *Concerned Citizens for Preservation of Clarksville v. Volpe*, 445 F.2d 486 (5th Cir. 1971).

103. 337 F. Supp. 221 (N.D. Cal. 1971).

that the granting of the injunction was in the public interest, there existed a high probability that the plaintiff would succeed on the merits, and the possible imminent harm to the plaintiffs outweighed the harm to the defendants resulting from the issuance of the injunction.¹⁰⁴ The government was enjoined from further action on the Foothill Freeway in Haywood, California until relocation issues could be adjudicated.

In *Lathan v. Volpe*,¹⁰⁵ the Ninth Circuit went a step further than the decision in *La Raza Unida*. The *Lathan* court reversed a district court's denial of a preliminary injunction to plaintiffs who were being displaced for the construction of Interstate 90. Disregarding the balancing of equities traditionally applied in injunction cases, and employed by the *La Raza Unida* court, the court in *Lathan* held that "[these] equitable doctrines . . . do not militate against the capacity of a court of equity as a proper forum in which to make a declared policy of Congress effective."¹⁰⁶ The court distinguished relocation cases from most other cases in which injunctive relief is sought by stating that "this is one of those comparatively rare cases in which, unless the plaintiffs receive *now* whatever relief they are entitled to, there is danger that it will be of little or no value to them or anyone else when finally obtained."¹⁰⁷

B. Eligibility—The Statutory Entitlement

As previously discussed,¹⁰⁸ federal and state agencies are attempting to deprive many displacees of coverage under the Act by excluding them from the section 101(6)¹⁰⁹ definition of "displaced person." These agencies deny eligibility either because of alleged lack of federal involvement in the acquisition at the time of displacement or because neither the acquisition nor the order to vacate is considered to be "for a federal program or project."

Lathan represents one instance in which prospective displacees successfully persuaded the court to order a state agency to comply with the Act before final commitment of federal funds. The state argued that it was not required to assure the availability of satisfactory replacement housing until the federal government gave final approval to the highway, since it was not until then that it became a federal project. Approval would not occur until planning reached such an advanced stage that many of the hardships of

104. *Id.* at 233.

105. 455 F.2d 1111 (9th Cir. 1971).

106. *Id.* at 1116, *quoting* *United States v. City & County of San Francisco*, 310 U.S. 16, 30-31 (1940).

107. *Id.* at 1117.

108. See discussion pp. 562-67 *supra*.

109. 42 U.S.C. § 4601(6) (1970).

relocation would already have fallen upon the displacees. The court found that unless the required assurances were made to the federal agency in advance of final federal approval, "there is danger that displacements will proceed without anyone's knowing whether the requirements of the statute can be fully met."¹¹⁰

Likewise, in *La Raza Unida*, Judge Peckham of the United States District Court for the Northern District of California ordered the state to comply with the requirements of the Act even though no federal financial assistance had yet been given for the construction of a 44-mile stretch of highway planned by the state. The court held that "[a]ny project that seeks even the possible protection and assistance of the federal government must fall within the [relocation] statutes and regulations."¹¹¹

Persons displaced for federal or federally assisted projects have been less successful in litigating to obtain their rights under the Uniform Relocation Act when the displacing party is not a state agency, but a private individual.¹¹² One significant exception occurs when tenants are ordered to quit by a private person so that that person may construct a privately owned facility for lease, in whole or in part, by the federal government. In a 1975 opinion by the Comptroller General,¹¹³ the General Services Administration was advised that if displacees of a trailer park could show that the landlord would not have evicted them and constructed an office building but for the fact that he anticipated leasing space in the new building to the government, their displacement would come as a result of a federal program or project and they would be eligible for assistance under the Act.¹¹⁴ If the Comptroller General is correct, it would seem difficult for a court to continue to uphold agency opinions that other tenants, displaced by private individuals so that the property might be used for a federal project, are ineligible for relocation benefits. This is especially true in light of Congress's overriding desire for uniformity.

110. 455 F.2d at 1119.

111. 337 F. Supp. at 227.

112. See discussion pp. 563-64 *supra*.

113. 51 Comp. Gen. 660 (1972) (B-173882).

114. *Id.* at 667. These tenants were able to produce evidence showing that the landowner had failed to acquire adequate financing for the building until the government lease agreement was made. This was sufficient for the Comptroller General to conclude that the landowner would not, but for the signing of the lease agreement, have displaced the petitioners.

The principle enunciated in this opinion was reaffirmed in an unreported opinion of the Comptroller General, No. B179973 (April 8, 1975). However, in that case the tenants were unable to prove that but for the government lease agreement the landlord would not have constructed the building.

A second way in which agencies have attempted to limit the definition of "displaced person," and thereby limit the eligibility of displacees, is through a narrow interpretation of "program or project." This has been particularly true of HUD in its efforts to avoid giving relocation assistance to the thousands of persons it displaces in carrying out its property disposition program.¹¹⁵ This class of displacees won an important victory in *Cole v. Hills*,¹¹⁶ in which the court found that HUD's order to the tenants to quit so that the building could be demolished was sufficient to meet the requirement of section 101(6).¹¹⁷ This decision leaves unanswered, however, the question of whether the acquisition of defaulted property is itself "for a federal program or project" and therefore whether all those displaced by such federal acquisitions are "displaced persons" under the alternate definition of section 101(6).¹¹⁸

In *Caramico v. Romney*,¹¹⁹ the court held that HUD's acquisition of defaulted HUD-financed property was not for a federal program or project, because it was "random and involuntary."¹²⁰ This issue will be argued again in the District of Columbia Circuit when *Cole* is heard on appeal. Strong arguments can be made that HUD's acquisition of defaulted property is not "random," but designed in detail by a statutory scheme which provides for subsidies, loans, and repossession as part of a plan for a revolving fund of assets used to finance other housing subsidies.¹²¹ Given that HUD has the option to forebear from acquisition, the acquisition is not involuntary.¹²² This multimillion dollar undertaking, directed by statute, regulation, and specific guidelines,¹²³ is a federal program of considerable magnitude.

115. See pp. 565-67 *supra*.

116. 396 F. Supp. 1235 (D.D.C. 1975).

117. *Id.* at 1236-37.

118. For the text of the alternate provision, see note 15 *supra*.

119. 390 F. Supp. 210 (E.D.N.Y. 1973), *aff'd sub nom.* *Caramico v. HUD*, 509 F.2d 694 (2d Cir. 1974).

120. *Id.* at 214-15.

121. Under HUD's various mortgage insurance programs, see note 65 *supra*, there exists a General and a Special Risk revolving insurance fund. The money to run the insured housing programs comes from these funds, and credited repayments and repossession acquisitions are added to the funds.

122. HUD is not required by law to repossess property on which the HUD-insured mortgage is in default. It may allow extensions for private mortgagors, or it may act as mortgagee in possession, leaving title with the mortgagor.

HUD may also assist sponsors of multifamily projects to avoid default completely by allowing them to increase rents or defer maintenance. As a positive measure to avoid default, HUD may provide operating subsidies as authorized by section 108 of the Housing and Community Development Act of 1974, 42 U.S.C. § 5308 (Supp. IV, 1974).

123. Relevant regulations can be found at 24 C.F.R. §§ 207, 236, 203, 235 (1975). HUD handbooks published for the guidance of its personnel on property disposition (and

Further evidence that HUD's acquisition of defaulted property is part of a federal program has been provided by HUD itself. In cases not involving relocation assistance questions, HUD has argued with success that federal law should be applied to the terms of its repossession of defaulted property because this acquisition is part of a federal program.¹²⁴ Since it is in HUD's best interest to have federal, rather than state, remedies made consistently applicable in foreclosure proceedings leading to acquisition of its insured property, it is a HUD victory when a court agrees, as the Eighth Circuit did in *United States v. Chester Park Apartments, Inc.*,¹²⁵ with the "Government's assertion that a uniform federal rule is required where, as here, the Government—to protect its interest in a *national program*—seeks appointment of a receiver"¹²⁶ HUD has admitted, and federal courts agree,¹²⁷ that the acquisition of defaulted property is part of a federal program. HUD should not be permitted to successfully argue that the same acquisitions are not a federal program in order to evade its obligations to the low income occupants displaced.

C. Eligibility—The Constitutional Right

Legal arguments concerning eligibility for URA entitlements have centered so far only on statutory interpretation. Arguments can also be made on constitutional grounds. The fifth amendment guarantee that "private property [shall not] be taken for public use without just compensation"¹²⁸ has traditionally involved the government's power of eminent domain. Congress, when it passed the URA, recognized that the traditional methods of compensation were no longer "just." Whether one's property interest is that

acquisition) include: Property Disposition Handbook Nos. 4315.1 (Multi-family), 4310.5 (One-Four Family), 4320.1 (Contracting), 4325.1 (Reconditioning Acquired Property), and 4309.1 (Accounting Handbook for Acquired Properties).

124. See, e.g., *United States v. Thompson*, 438 F.2d 254 (8th Cir. 1971); *United States v. Chester Park Apartments, Inc.*, 332 F.2d 1 (8th Cir.), *cert. denied*, 379 U.S. 901 (1964).

125. 332 F.2d 1 (8th Cir.), *cert. denied*, 379 U.S. 901 (1964). In *Chester Park*, the government moved to enforce a clause in the mortgage, guaranteed under the National Housing Act, which provided for the appointment of a receiver for the apartment building in case of foreclosure. The mortgagor opposed the foreclosure on the ground that the receivership clause violated state law. The court upheld the clause on the principle that federal law superseded state law in cases such as this, when there was an overriding governmental interest in uniformly administering national programs.

126. *Id.* at 4 (emphasis added).

127. See *id.*; *United States v. Thompson*, 438 F.2d 254 (8th Cir. 1971). In *Thompson*, the court held that federal law would apply in determining the remedy available to the Federal Housing Authority in enforcing its security interests in the nationwide program under which it foreclosed on an FHA-insured apartment house in Little Rock, Arkansas.

128. U.S. CONST. amend. V.

of a leaseholder or titleholder, the value of a home often exceeds the fair market value of the real estate. The House Report noted:

[i]t [has become] increasingly apparent that the application of traditional concepts of valuation and eminent domain resulted in inequitable treatment for large numbers of people displaced by public action.¹²⁹

One may argue that the URA does not provide a new congressional benefit, but only a new formula under which the federal government may effectuate the dictates of the fifth amendment. The URA was an attempt to define, in 1970, the meaning of the term "just compensation" and to insure justice by mandating uniformity in all "takings" in which the federal government is involved.

If one accepts a fifth amendment theory of the URA, then any taking of a person's home for a public use requires public compensation, and the public or private status of the agent performing the taking becomes irrelevant.¹³⁰ The fifth amendment does not limit just compensation to people whose private property is taken for a public use by a public agent. If, as in *Manning v. Romney*¹³¹ and *Parlane Sportsware v. Weinberger*,¹³² a private party "takes" a tenant's property interest in his leasehold in order to use federal funds for a federal project, the fifth amendment requires that those persons whose property is "taken" for the project be justly compensated.

D. Enforcement

Displacees are also challenging in federal court the means employed by state and federal agencies in their attempts to comply with the mandates of the URA in areas other than eligibility. Agency enforcement of section 210 has come under careful judicial scrutiny in federal courts in California, where displacees have won substantial victories.¹³³

As previously discussed,¹³⁴ section 210 requires state agencies to give "satisfactory assurances" to the head of the federal agency which is funding

129. HOUSE REPORT 2. See note 11 *supra* for full text of quotation.

130. It is well settled that private entities may be the means for achieving a public purpose. *Evans v. Newton*, 382 U.S. 296 (1966); *Berman v. Parker*, 348 U.S. 26 (1954); *Terry v. Adams*, 345 U.S. 461 (1953).

131. Civil No. 72-1342 (D.C. Cir. April 13, 1972). See note 61 *supra*.

132. 381 F. Supp. 410 (D. Mass. 1974), *aff'd*, 513 F.2d 835 (1st Cir.), *cert. denied*, 423 U.S. 925 (1975). See note 64 *supra*.

133. See *LaRaza Unida v. Volpe*, 337 F. Supp. 221 (N.D. Cal. 1971).

134. See pp. 561-62 *supra*.

the project. This is essentially the same provision as that which appeared in the now repealed section 502 of the Federal-Aid Highway Act of 1968.¹³⁵ In interpreting section 502, the *Lathan* court determined that the federal agency head could not be "satisfactorily assured" that there was a sufficient supply of replacement housing when the statistics upon which the state agencies based these assurances were compiled from state-wide housing vacancy rates, with no specific regard for individual projects.

The court in *Keith v. Volpe*,¹³⁶ citing *Lathan*, held that section 210 of the URA required "the same basic assurances"¹³⁷ as had section 502 of the Federal-Aid Highway Act. The court ordered that the statutorily required satisfactory assurances could only be grounded upon studies of replacement housing conducted on a project-by-project basis.¹³⁸ The court then examined the methods by which the state compiled the replacement housing study and found them inadequate for providing the required satisfactory assurances. Specifically, the state agencies were ordered to cease their use of turnover rate in estimating vacancies, correct their failure to classify data on the availability of rental property according to size and price, investigate the condition of the apartments which were allegedly available, and make sure that their mathematics were accurate.¹³⁹

Litigation over the scope of the URA's benefits and the classes of people eligible for its entitlements has been sparse due to the brief time allowed for filing URA suits,¹⁴⁰ the poverty and lack of organization of the majority of displaced persons, and the fact that the relocation issue is no longer in vogue.¹⁴¹ However, lawsuits in which displacees are successful can and do have national impact because agency policy, if it is to be at all effective, must be carried out on a nationwide basis. When a court in one jurisdiction

135. Pub. L. No. 90-495, § 30, 82 Stat. 830 (formerly 23 U.S.C. § 502 (1970)).

136. 352 F. Supp. 1324 (C.D. Cal. 1972). This suit was instituted by area residents seeking to enjoin the construction of California's Century Freeway until the state complied with the requirements of the URA and the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-47 (1970).

137. 352 F. Supp. at 1344.

138. *Id.*

139. *Id.* at 1350.

140. If projects are not enjoined at the outset, claims will be mooted. See p. 571 *supra*.

141. Public interest and concern over displacees reached its high point in the 1960's. See Hartman, *Relocation: Illusory Promises and No Relief*, 57 VA. L. REV. 745 (1971). Since then it has not been an issue that has attracted popular attention, especially as compared with the amount of litigation growing out of the National Environmental Protection Act, 23 U.S.C. § 138 (1970), passed within one year of the URA. This trend is changing, however, due in part to the relocation crisis brought on by HUD's property disposition program.

orders an agency to change a policy or procedure, that agency is forced to seriously consider either making that change consistently throughout its branches, or administering the program by multiple standards and procedures. A single case, won in one circuit, not only brings relief to the displacees who filed the suit and other potential displacees in that jurisdiction, but can also provide tremendous impetus for the agency to make national policy changes.

VII. CONCLUSION

The URA has proved to be a less than satisfactory solution to the problems encountered by members of low income households displaced through federal action. However, the Act provides a framework from which a truly meaningful relocation program can be fashioned.

The compensatory scheme of the URA must be remodeled so that payments are in line with economic reality. Instead of an inflexible replacement housing allowance set by Congress, the Act should compel federal agencies to annually adjust the amount of these payments so that they reflect current market rental and housing prices. Moreover, Congress must eliminate by amendment the ambiguities in the Act's definition of "displaced person." Irate letters to agency officials and fiery speeches on the Senate floor have failed to deter agencies from narrowly construing this definition so as to exclude large numbers of displacees from the Act's coverage. Finally, Congress must realize that agency attempts at achieving uniformity in the administration of the URA have failed. The goal of uniformity can be realized only by legislation mandating the formulation of a single set of regulations for all agencies.¹⁴²

If the Act is amended in these three respects, the most glaring substantive deficiencies in Congress' relocation program will be eliminated. However, the daily responsibility for administering and enforcing the URA is still in the hands of the federal agencies and the courts. If the suggested amending legislation is not to be deprived of its effectiveness, federal agencies' attitudes toward the rights of the displacee must change. The federal agency cannot continue to regard the displacee as a recipient of a mere gratuity rather than as an individual rightfully entitled to compensation for property taken by the federal government. It is clear from the stated

142. This article is limited to suggestions for the improvement of the already existing relocation program. Of the many possibilities for fashioning a completely new system, perhaps the most obvious would be to create a separate fund for relocation payments, administered by a department of Congress, a new agency, or an intra-agency task force. This would eliminate the agencies' economic motive for limiting eligibility and minimizing the amount of payments.

purpose of the Act and its legislative history that Congress regarded the relocation payment as an entitlement. The recent trend in federal court decisions implies that the courts are in accord with this view. Until all three branches of the government begin to take seriously the goals of the URA, the burdens of displacement caused by public projects will continue to fall upon those least able to bear them—the urban poor.

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